IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO.497 Of 2005.

Judgment Reserved on 28.2.2007.

Date of decision: March 08 ,2007.

Smt. Asha Devi. ……. Petitioner.

Vs.

B.S.N.L. and another. ……. Respondents.

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The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the petitioner: Mr.R.S. Gautam, Advocate.

For the respondents: Mr. Ratish Sharma, Advocate.

Surinder Singh, J.

In this petition, the petitioner has mainly sought the following reliefs:-

(i) "That the respondents may be directed to consider the case of the petitioner for appointment against Group C post in Sr. TOA (G) cadre instead of Group D post.

(ii) That the respondents be directed to offer the post of Group C in Sr. TOA (G) cadre to the petitioner."

We have heard the learned counsel for the parties and have gone through the record.

The husband of Asha Devi petitioner, who was a Junior Telecom Officer (JTO), had died on 15.7.2002 and after his death the petitioner who was holding a degree of B.Sc. (Medical) had applied for appointment on compassionate grounds, for the post in group `D'. Her case was considered and recommended by the High Power Committee of the respondents in the meeting held on 28.10.2003. Thereafter on the availability of the vacancy, the petitioner was asked vide Annexure-R5 dated 11.12.2003 to submit the original certificates vide Annexure R-5,

which were supplied to the department vide letter dated 24.12.2003 (Annexure R-6). Thereafter, vide letter dated 27.2.2004,(Annexure-P4) the petitioner, who was an approved candidate for the post of Group 'D' was appointed in the pay scale of Rs.4000-120-5800 (IDA pay scale) purely on temporary basis and posted in the office of Chief General Manager, Telecom H.P. Circle, Shimla against a vacant post with immediate effect. The petitioner did not join the said post and submitted a representation (Annexure P-6) dated 8.3.2004, requesting to reconsider her case for her appointment in Group "C" on the basis of a circular dated 24.12.2003 (Annexure P-5), to appoint her like Somavati, a similarly situated person against the post of Group-'C' instead of group 'D', to avoid humiliation as she was a graduate and also doing M.A. Her case was sent to respondent No.1 by respondent No.2 for reconsideration, vide letter dated 12.3.04 (Annexure P-7), the request was declined by the respondents. Accordingly, she was informed vide letter dated 11.5.2004 (Annexure P-8) and was requested to join her duty in Group "D" category immediately, failing which her name would be removed from the list of approved candidates. Again the petitioner sent representations Annexure P-9 and P-10, to respondent No.1 on 11.5.2004, 26.2.2005 respectively for reconsideration on the same grounds. However, the petitioner did not join the post in group 'D', but filed the present writ with the above prayer. During the pendency of this petition, her name was deleted by the respondents for her appointment as group 'D' even.

We are not unmindful of the legal position that the appointment on compassionate ground is not a vested right and cannot be claimed, neither as a right of inheritance nor by virtue of the nature of service rendered by the deceased and even in the absence of the vacancy it is not open to any authority to appoint a person to any post nor the compassionate employment can be given as a matter of course irrespective of the financial condition of the family of the deceased. The

whole object of granting compassionate appointment is thus to enable the family to tide over the sudden crises or to get over the emergency and not to give a member of such family a post much less a post for post held by the deceased. The Government or the public authority concerned has to examine the financial condition of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crises that a job is to be offered to the eligible member of the family.

Keeping in view, the objective of the Scheme on compassionate appointment in our considered opinion the post on compassionate ground is not to be offered to cater to the status of the petitioner but to relieve the family from financial destitution or economic calamity, as held in **Umesh Kumar Nagpal** vs. **State of Karnataka & Ors.** [JT 1994 (3) SC 525] by the Apex Court. The favourable treatment given by compassionate appointment is the exception to the rule made in favour of the family of the deceased employee which is in consideration of the services rendered by him and the legitimate expectations and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

As a matter of fact, the respondents had declared the cadre of Senior TOA (G) Group 'C' as wasting cadre since there had been no further induction for the last about 18 years except few compassionate appointment in TOA (G) cadre and it was clarified vide letter dated 18.11.2003 (Annexure R-7) that the appointment could only be made to Sr. TOA (G) in Group "C" and where compassionate ground applications were offered in TOA (G) cadre, prior to issue of letter dated 18.11.2003 will not be reopened.

Whereas, in the instant case, the respondents have considered and recommended the case of the petitioner finding her eligible for appointment on compassionate ground in the meeting held on 28.10.2003

by the High Powered Committee on the basis of the policy which was existing at the relevant time, to a group 'D' post much prior to the circular dated 24.12.2003. Now the petitioner has no right to claim or to change to group 'C' post, on the above facts, circumstances and legal position explained. Further, the petitioner is not a similarly situated person as that of Soma Vati, as her case was recommended by the High Powered Committee for her appointment to grade 'C' on 22.6.2004 (Please see: Annexure-R10), i.e, after clarificatory circulars Annexure-P7 dated 18.11.2003 and Annexure-P5 dated 24.12.2003. Therefore, the petitioner cannot derive any benefit by quoting the case of Somavati. Therefore, in our considered opinion, the petition deserves to be dismissed.

Since the name of the petitioner has been removed from the list of approved candidates during the pendency of the petition, before filing the reply by the respondents, without affording her any opportunity, which is opposed to the principle of natural justice, and is also hit by the doctrine of lis pen dense, therefore, we hereby direct that if the petitioner is willing to join as group 'D' post as per her appointment made vide letter dated 27.2.2004 (Annexure-P4), she may do so, within two months from today, the respondents shall permit the petitioner to join the Group 'D' post, as aforesaid. With the above direction, the petition is dismissed. No orders as to costs.

(Deepak Gupta)
Judge.

(Surinder Singh)
Judge.

March , 2007.
(BM)